

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 19, 2006, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor (Gerry Krieser absent); Marvin Krout, Ray Hill, Mike DeKalb, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held July 5, 2006. Motion for approval made by Carroll, seconded by Strand and carried 6-0: Carlson, Carroll, Larson, Strand, Sunderman and Taylor voting 'yes'; Cornelius abstaining; Esseks and Krieser absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

July 5, 2006

Members present: Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson; Esseks and Krieser absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06021, SPECIAL PERMIT NO. 04020A and COUNTY SPECIAL PERMIT NO. 05058, Martell Development Community Unit Plan.**

Ex Parte Communications: None.

Item No. 1.3, County Special Permit No. 05058, was removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Strand and carried 7-0: Carlson, Carroll, Cornelius, Larson, Strand, Sunderman and Taylor voting 'yes'; Esseks and Krieser absent.

Note: This is final action on Special Permit No. 04020A, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 06042
FROM AG AGRICULTURAL TO I-1 INDUSTRIAL
ON PROPERTY GENERALLY LOCATED
SOUTHEAST OF S. 14TH STREET AND SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 19, 2006

Members present: Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson; Esseks and Krieser absent.

Staff recommendation: Deferral, at the request of the applicant.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a two-week deferral.

Carroll moved to defer, with continued public hearing and action scheduled for August 2, 2006, seconded by Strand and carried 7-0: Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson voting 'yes'; Esseks and Krieser absent.

The applicant was not present.

Opposition

1. Henry Sader, the owner of Wilderness Kennels on 20th & Saltillo, testified at this time, stating that he is not totally against the change of zone, but has some concerns. One concern will be the truck traffic that will be on Saltillo Road if the applicant's plans go through for a ready-mix concrete plant and large distribution center. Saltillo Road currently has a high volume of traffic, and the speed will be another concern. The current speed limit is either 50 or 55 mph, and it is treacherous when coming out of the Wilderness Kennels driveway and taking 25th to get back onto Saltillo. A third concern will be how much water they will use. He has heard they are going to try to be annexed, but at this point the aquifer runs north and his business uses quite a bit of water. His business cannot survive without water.

2. Neil Balfour appeared on behalf of the property owner directly to the west of the property in question. The property owner has a concern about water and this has been the property owner's primary residence for 67 years. Obviously, she is in turmoil because her property is in the midst of this road construction. This adds to her stress level at age 88. She understands the industrial designation but her source of income is from a hog operation on

that property and water is important. She does not know anything about the water levels, but it would be a concern as to whether this change will affect her operations. The water issue needs to be reviewed as well as the pollution from the type of use contemplated.

CHANGE OF ZONE NO. 06043
FROM AG AGRICULTURAL TO I-1 INDUSTRIAL
ON PROPERTY GENERALLY LOCATED
SOUTHEAST OF S. 14TH STREET AND SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 19, 2006

Members present: Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson; Esseks and Krieser absent.

Staff recommendation: Deferral, at the request of the applicant.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a two-week deferral.

Carroll moved to defer, with continued public hearing and action scheduled for August 2, 2006, seconded by Strand and carried 7-0: Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson voting 'yes'; Esseks and Krieser absent.

The applicant was not present.

COUNTY SPECIAL PERMIT NO. 05058,
MARTELL DEVELOPMENT COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED AT
S.W. 29TH STREET AND W. MARTELL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 19, 2006

Members present: Taylor, Sunderman, Esseks, Carroll, Larson, Cornelius, Strand and Carlson; Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to two communications received in opposition.

Staff presentation: Mike DeKalb of Planning staff explained that this proposal is for a community unit plan in split jurisdiction with Sprague. The Planning Commission and the Village of Sprague previously approved a change of zone from AG to AGR on the property. The subdivision consists of four lots (one large lot and three smaller lots) with Martell located to the south edge. Split jurisdiction requires approval by both the Village of Sprague and Lancaster County.

Proponents

1. Matt Langston of ESP presented the proposal for four single family lots of greater than three acres, two of which will be five acres or greater. There is rural water available. There has been a water report completed showing adequate water in the area. Each lot will have its own septic system, whether a leach field or lagoon. This proposal is consistent with the characteristics of the community with larger lots. This will not be condominiums or low cost housing. The developer believes it will be an improvement to the area. There are currently two wells on the site that have 70 gpm. The applicant has already received approval of the change of zone to AGR from Lancaster County and the Village of Sprague.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 19, 2006

Taylor moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 7-0: Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson voting 'yes'; Esseks abstained as he arrived during the course of this public hearing; Krieser absent. This is a recommendation to the Lancaster County Board.

STREET & ALLEY VACATION NO. 06004
TO VACATE 25' OF RIGHT-OF-WAY GENERALLY
LOCATED AT EAST A STREET AND MADISON STREET
IN WALTON, NEBRASKA.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 19, 2006

Members present: Taylor, Sunderman, Esseks, Carroll, Larson, Cornelius, Strand and Carlson; Krieser absent.

Staff recommendation: A finding that the proposed vacation is not in conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Additional information submitted for the record: Mike DeKalb of Planning staff submitted a letter from an affected property owner who has intentions to build a shop. He believes he will lose access and that the proposed vacation will hamper future development of the property for his family.

Staff presentation: DeKalb explained that this is a petition to vacate a street in Walton, Nebraska, which is in the three-mile jurisdiction and requires both city and county approval. The petition is by the church. The staff is recommending denial because existing plotted, buildable lots would lose access with only alleys that are not even open today; there would be no access to the land to the north for future subdivision – the issue being connectivity. If the Planning Commission votes to recommend approval, the staff recommends that the area be replatted so that the landlocked parcels would have frontage and access.

DeKalb clarified that the access that appears to be along the north side is an alley that is not open, and there is a half-street to the north that is not open. The half street is not open and it is not maintained. If it were opened, it would be a county road and maintained by the county.

Proponents

1. Pastor Ed Wicks, of Grace Lutheran Church in Walton, suggested that the original Exhibit A had errors with regard to property ownership and he submitted a new exhibit. Keith Brinkhoff owns Lots 1 and 12; Bill Sterns owns Lots 2 and 11; and Ira Humm owns Lots 3 and 10. One of the reasons for denial was that Lot 10 of Block 3 would be landlocked, but that owner has access to Maxwell Street because he owns Lot 3 and Lot 10. He also pointed out that there has been no road between the church and its parking lot for 12 years. The church has maintained that area with rock and does the snow removal. The church's intent with this street vacation is to expand the church to the east. The church has no intention of closing access to the parking lot from A Street. There will be an entrance from A Street so the people to the north would have access through that parking lot, as they do now.

Larson inquired whether the church would consider granting an easement to the north lots for access. Pastor Wicks did not believe the church would object.

Strand inquired whether the vacated right-of-way would be used for parking. Pastor Wicks stated that the church is located on Lot 6 and would like to expand to the east, pushing it out past where the road is now and into the current parking lot. This would allow more parking to the east to where the alley is located. The north lot which the church purchased would then be used for parking in that area, so that the church itself would run through Lots 6, 7 and 8.

Strand wondered where the easement would be located for the back lots. Pastor Wicks responded, stating that the area to the west of the church is an opening to the parking lot. He had not thought about an easement so he is not sure, but he would make sure they would have access.

Larson observed that the whole question appears to be access to certain lots. He lives near Walton and this church is the nicest thing in Walton. If there was some way to get access to all the landowners to the north, he thinks this would be acceptable. But, if there is no access to those lots, he agrees that there is no choice but to vote no.

Esseks inquired how the house to the north gets access now. Pastor Hicks believes that they drive through the parking lot. Esseks observed that there looks to be a public right-of-way at the northern edge of the property but it does not appear to be used much. He would certainly want the church to be able to expand and maintain the facility at this location, but this is really difficult because the Planning Commission represents the public and one of the characteristics of public benefit is access to property. He wondered whether the church had thought of any other solution. Pastor Wicks stated that the church could possibly give 9 or 10 feet to make that alley 26' wide. That would still allow expansion of the church property with full access to the north.

Larson believes that the Commission wants the church to be able to expand and that solution might be a good one in that it would provide access and not interfere much at all with the expansion.

2. Barry Waid, President of Grace Lutheran Church Council, testified in support. He suggested that there are several different avenues for providing access, one of which would be the 16' of right-of-way referred to as an alley on the east side of the lot. He has no doubt that the church would be willing to consider granting either a permanent easement or gifting property in order to facilitate that kind of arrangement. He discussed the hardship placed on the church as a congregation. The sanctuary is located on the north two-thirds of the church, with the altar located on the north facing back to the south. There is a very strong sentiment that the church members want to maintain the integrity of the original structure. The expansion to the east would be for things like restrooms, church office, and Sunday School classrooms. He acknowledged that the church does own the land to the north that was formerly a house. However, it would be much more difficult to utilize the land to the north without making major changes to the church structure. There could be a drive cut east of the new addition that would then go back to the same lots. He believes there are a variety of alternatives available.

Opposition

1. Pete Andersen, 701 Eldon Drive, half-owner with Keith Brinkhoff of Lots 1 and 12, testified in opposition. Brinkhoff has also submitted a letter in opposition because this

proposal would leave the three property owners north of the church without public street access. There would be no way to have the traffic flow to or around these three properties. Currently, he is renting the house and garage located on Lot 1. Lot 12 is being used for personal storage. He has used the so-called "half street" many times. The main objection is the street. The alleys are 16' alleys. With regard to the alley on the north which goes all the way to 120th Street, he never even knew it was an alley or that it was supposed to be an alley. He has never seen it used as an alley. There used to be a fence on the north side and there is a tree line along there, which is apparently in the middle of the alley. The north/south alley between Lots 1-6 and 7-12 has never seen a vehicle on it. He hopes to build his retirement home on that lot someday, but at the current time it does not have any sewer, etc.

Larson inquired as to how these property owners get access to their lots now. Andersen stated that they get access through this so-called "half-street", which is 25' wide. Maxwell Street is way over between the ballfield and Lots 1, 2, and 3. It is 50' wide and goes all the way back to Lot 1 up to Lot 6. Andersen and Brinkhoff are using the area proposed to be vacated to get to Lot 12.

Larson asked whether Andersen would object if there was a way to have access between Lots 7, 8 and 9 and 4, 5 and 6, and then west to the existing half-street. Andersen has never seen the two so-called "alleys" used nor does he know if they can be used.

Larson believes the church is offering to take the east side of Lots 7, 8 and 9 and create a permanent easement, and then another easement on the north side of Lot 9 over to the west side of Andersen's property. Andersen indicated that he was not prepared to agree to an easement without further discussion or understanding. Larson asked whether he would be willing to negotiate with the church and Andersen indicated that he certainly would.

Carlson wonders if it might be more appropriate to defer this proposal to give the parties an opportunity to discuss it.

Staff response

DeKalb reminded the Commission that Walton is in the City's growth tier and that it is anticipated that the city will get there in the 12-year range. Presumably, the land abutting to the north would subdivide into residential lots and blocks, which requires connections. The best alignment for a new street to solve the problem would be when the land to north would subdivide and the half-street would be platted as a full street. Then you could have a stub and extension to the north. But, that potential subdivision is not a current circumstance.

Secondly, when talking about moving lot lines around, DeKalb suggested that this also refers

to a subdivision and plat requirement. He also suggested that an easement in lieu of right-of-way is not a good idea. The staff would recommend that it be platted as a package with a platted street.

DeKalb also noted that if the primary driver here is the expansion of the church, the church buildings and church parking can be accommodated under the existing zoning. But if the issue that is driving this is the contiguous extension of the church, then staff would recommend that it be replatted.

Larson suggested that the church could give an easement on the east and north side of their property. DeKalb believes that such a easement would result in a half easement and a half dedicated road. The north/south street would be half easement and half right-of-way. Larson suggested the easement could be all on the church property. DeKalb agreed that it is an option but not in any way a good option.

Esseks wondered whether the Commission could recommend that this project be reconsidered, with some imaginative and careful planning, to achieve the interests of both parties. DeKalb suggested that the parties could get together and submit an engineered drawing or plat showing the street dedication and realignment together with the street vacation. That would give us something to work with.

Response by the Applicant

Waid stated that the suggestion of part easement and part right-of-way on the east side would need to be approved by the Church Council. He does not believe there would be any strong reservations about either gifting or some nominal consideration. There are really no identifiable streets and alleyways out there now. People go through the church parking lot to go to the north, and he has seen cars go down the alleyway on the east side. There is 16' on the east that could be utilized and 25' that cuts through the parking lot. Building a street would require more right-of-way. The church has been good for the community and he assured that the church is not interested in displacing people or rendering their land useless. The church would be willing to accommodate the needs of other people by donating or selling for nominal consideration that which would be necessary on the east.

Carlson explained that the petitioner is entitled to a vote by the Commission today; however, there has been some commentary about further discussing the options between the parties. Waid indicated that the church would agree to a delay.

Strand suggested that another option would be to discuss "donating another 25' over here and talking about enlarging this and doing the access this way and leaving the property down here in tact." She suggested that the church talk with the property to the north about that process.

The applicant requested a four-week deferral.

Larson clarified that he has no financial interest in the church and is not a member. He lives ½ mile away. But, he knows that the church has revitalized that unincorporated village and beautified a big portion of it. It is a viable congregation and he would like to see them accommodated.

Larson moved to defer four weeks, with continued public hearing and action on August 16, 2006, seconded by Strand and carried 8-0: Esseks, Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson voting 'yes'; Krieser absent.

STREET & ALLEY VACATION NO. 06005
TO VACATE A PORTION OF THE NORTH 62ND STREET
RIGHT-OF-WAY, BETWEEN HAVELOCK AVENUE AND THE
NORTH-SOUTH ALLEY BETWEEN N. 62ND STREET AND
N. 63RD STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 19, 2006

Members present: Taylor, Sunderman, Esseks, Carroll, Larson, Cornelius, Strand and Carlson; Krieser absent.

Staff recommendation: A finding that the proposed vacation is not in conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Staff presentation: Greg Czaplewski of Planning staff explained that this is an application by Pinnacle Bank to vacate some right-of-way in 62nd Street. The bank is on the southwest corner of the intersection. They are asking to vacate about 6" width of right-of-way along the edge of the building, with a little bump-out area that increases to about 1.5' by 12'. The purpose is for some facade improvements. The setbacks are zero feet and the bank is currently built to the edge of their property. They want to add some exterior treatments to the building which would encroach the right-of-way. Staff is recommending denial. The City Council has granted the bank a permit to use the right-of-way. But the bank's preference is to vacate the right-of-way. The City prefers the permit to use the right-of-way, which requires a one-time bond and an annual fee. The City then retains ownership. The permit can be terminated at some point if the city ever needs the right-of-way for public use.

Esseks sought clarification as to the advantage to the city for the permit rather than the vacation. Czaplewski explained that under the permit, the property would continue to be public right-of-way and it would be easier for the city to put it to public use in the future, if such a need arose. If the right-of-way is vacated and sold, the city would have to purchase it back if ever

needed. This type of permit has been used for similar reasons in other locations around the community, i.e. the property across the street to the north. Dennis

Bartels of Public Works explained that the annual fee is based on a formula set forth in the Lincoln Municipal Code and is based on the assessed value. He did not know the dollar amount; however, he is sure it would be less than the property tax. It is only 60 sq. ft., so it would be minimal.

The petitioner was not present.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

July 19, 2006

Carroll moved to find the proposed vacation to not be in conformance with the Comprehensive Plan and to deny, seconded by Cornelius.

Strand stated that she will vote against the motion because it is only six inches and if they are willing to pay property tax, why not let them?

Carroll believes the permit process is acceptable. And he likes the fact that the city retains ownership of the right-of-way.

Carlson acknowledged that it is a tiny piece, but in terms of consistency, he will support the motion.

Motion for a finding of not in conformance with the Comprehensive Plan and to deny carried 8-0: Esseks, Taylor, Sunderman, Carroll, Larson, Cornelius, Strand and Carlson voting 'yes'; Krieser absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06040
FROM B-1 LOCAL BUSINESS, B-3 COMMERCIAL,
R-6 RESIDENTIAL, R-5 RESIDENTIAL
AND R-4 RESIDENTIAL
TO R-4 RESIDENTIAL AND R-2 RESIDENTIAL
ON PROPERTY GENERALLY
LOCATED BETWEEN 40TH AND 48TH STREETS,
FROM RANDOLPH TO "A" STREETS.
REQUEST FOR RECONSIDERATION:

July 19, 2006

Members present: Taylor, Sunderman, Esseks, Carroll, Larson, Cornelius, Strand and Carlson; Krieser absent.

The Clerk announced that this application and request for reconsideration was added to this agenda by Addendum at the request of Rick Peo of the City Law Department on behalf of City Council members, Patte Newman and Dan Marvin.

Rick Peo of the City Law Department advised the Commission that Patte Newman and Dan Marvin have requested that the Commission reconsider the prior action of deferral. The motion to rescind is the broadest remedy available to allow any member to make the motion. Peo reiterated that he does not have the authority to force the Commission to take action, but he reminded that there is a procedure whereby the applicant could go to the District Court to seek a mandamus to order the Planning Commission to fulfill its function. If that were successful, the city would be required to pay the costs and any attorney fees.

Strand is concerned about the amount of time to notify property owners. It was the Commission's desire to delay because they did not believe adequate notice was given. Peo would direct the Planning Department to provide the same notice as was given for the original public hearing. Peo was not aware of any additional protests that have been submitted since the deferral.

Strand also inquired as to what constitutes a conflict of interest. She knows a Commissioner has a conflict if they own property being rezoned, but what if a family member owns property in the area? Peo could not recall how the statute reads and offered to research this issue and get back to the Commission.

Carroll is concerned about the advance notice as well. He does not believe the opposition was provided adequate opportunity to protest. He suggested that 30-day notice would be more appropriate.

Marvin Krout, Director of Planning, suggested that it may be important to consider out-of-town property owners and whether 10 day notice is adequate in any change of zone case. Strand believes that a downzone is unusual in that it requests to change zoning on property owned by someone other than the applicant.

Esseks inquired whether there is any state statute mandating a minimum amount of time for the owner to be informed and to respond. Peo indicated that the written notice is not state mandated but only under the city code provisions. There was further discussion about what information is provided in the notice. The zoning is not specifically defined in the written notice. Esseks believes that we owe it to the property owners to inform them of the possible consequences. Peo advised that the code requires at least 10 days advance written notice.

Esseks made a motion to rescind the action deferring this application until November 8, 2006, seconded by Taylor.

Esseks stated that he is basing his motion upon the principle that the petitioner is entitled to a reasonably quick response to his or her petition.

Carlson stated that he will support the motion due to the Law Department's suggestions as to why the date should be sooner.

Motion to rescind failed 4-4: Taylor, Esseks, Cornelius and Carlson voting 'yes'; Sunderman, Carroll, Larson and Strand voting 'no'; Krieser absent. Due to the failure of the motion to pass, this request was held over until the next regular meeting of the Planning Commission on August 2, 2006.

Carlson stated that he would appreciate hearing comments by those who voted against the guidance of legal counsel.

Carroll does not believe that there is any financial harm to the neighborhood association by this delay. The Downzone Committee (4 members of the Planning Commission) discussed all of the questions that have been discussed today and the recommendations of the committee will be discussed by the Planning Commission at a workshop following this meeting. He believes that those recommendations need to be discussed and applied to this downzone application.

Sunderman agreed with Carroll.

Esseks suggested that if the recommendations are procedural and can be agreed upon by the Commission, then hopefully the time period for taking up this change of zone can be shortened.

Strand indicated that she would agree, but the subcommittee has spent a long time developing the report and she wants to have the discussion and then decide where to go. Carlson believes it is a due process issue. He does not know how the Commission can hold up an application to discuss potential rule changes.

Cornelius agreed with Carlson. None of this matters to the 40th & A neighborhood. They submitted the application based on a certain set of expectations.

Carlson reiterated that he believes this application should be judged by the rules under which the application was submitted. Strand indicated that she would vote against the downzone in that case. Carlson believes it is the Commission's duty to render an opinion/recommendation.

Esseks commented that other communities have had a growth moratorium because they are wrestling with issues of management. He suggested that the Commission put in extra time and attempt to reach agreement on the recommendations and then move on.

There being no further business, the meeting was adjourned at 2:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 2, 2006.

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